

Senate Bill No. 1299

CHAPTER 872

An act to add and repeal Chapter 5 (commencing with Section 71035) of Part 1 of Division 34 of the Public Resources Code, relating to environmental protection.

[Approved by Governor October 13, 1995. Filed
with Secretary of State October 13, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1299, Peace. Environmental protection: permits.

Under existing law, the California Environmental Protection Agency is administered by the Secretary for Environmental Protection. Specified state agencies are established within the agency.

Existing law, the Environmental Protection Permit Reform Act of 1993, among other things, requires the secretary to establish an administrative process which may be used, at the request of a permit applicant, to designate a consolidated permit agency, as defined, for projects that require permits from 2 or more environmental agencies, as defined.

This bill would require the secretary, by January 1, 1997, to adopt regulations establishing the permit consolidation zone pilot program, as described, consisting of specified application, administrative, and enforcement processes. The bill would require those regulations to be developed by the secretary in coordination with other specified state agencies and in consultation with representatives of cities, counties, local environmental agencies, and certified uniform program agencies. The bill would prescribe procedures for termination of involvement in the pilot program. The bill would prescribe related requirements and procedures for the program.

The bill would require the secretary and the Secretary for Trade and Commerce to prepare and submit an annual report to the Governor and the Legislature containing specified information by January 31 of each year.

The bill would remain in effect only until January 1, 2002.

The people of the State of California do enact as follows:

SECTION 1. Chapter 5 (commencing with Section 71035) is added to Part 1 of Division 34 of the Public Resources Code, to read:

71035. As used in this chapter:

(a) "Certified unified program agency" means a certified unified program agency as designated under Chapter 6.11 (commencing with Section 25404) of Division 20 of the Health and Safety Code.

(b) "Environmental agency" means an environmental agency as defined in subdivisions (a) to (g), inclusive, of Section 71011.

(c) "Environmental permit" means any environmental permit issued by an environmental agency or a certified unified program agency.

(d) "Facility compliance plan" means a plan that does all of the following:

(1) Contains information and data for all emissions and discharges from the facility and the management of solid waste and hazardous waste, including all information relevant to individual environmental permits that would otherwise be required for the facility.

(2) Specifies measures, including, but not limited to, monitoring, reporting, emissions limits, materials handling, and throughputs, to be taken by the project applicant to ensure compliance with all environmental permits that would otherwise be required.

(3) Meets the requirements of all individual environmental permits that would otherwise be required.

(4) Ensures compliance with all applicable environmental rules, regulations, laws, and ordinances.

71035.1. On or before January 1, 1997, the secretary shall adopt regulations establishing the permit consolidation zone pilot program consisting of all of the following:

(a) An application process whereby cities and counties may request that all or part of their jurisdiction be designated a permit consolidation zone.

(b) An administrative process which may be used for new or expanded facilities within a designated permit consolidation zone, at the option of the permit applicant, to substitute a facility compliance plan for any environmental permit. The application process shall contain a means to determine that new or expanded facilities are in compliance with all applicable laws and requirements.

(c) A process to coordinate inspection and enforcement activities among the agencies that would otherwise have issued individual permits for facilities choosing to be permitted through a facility compliance plan.

(d) Procedures pursuant to which applicant cities and counties may amend or terminate the designation.

71035.2. The regulations required by Section 71035.1 shall be developed by the secretary in coordination with the Secretary for Trade and Commerce, the Secretary of the Resources Agency, and

the Secretary for Business, Transportation and Housing, and in consultation with representatives of cities, counties, local environmental agencies, and certified unified program agencies.

71035.3. The application process required by subdivision (a) of Section 71035.1 shall provide for all of the following:

(a) A competitive application process which designates not more than 20 cities and counties with a population greater than 5,000 as determined in the 1990 census, or parts thereof, as a permit consolidation zone.

(b) The award of designations by a review panel composed of the secretary and the Secretary for Trade and Commerce.

(c) The award of designations based on the applications submitted. In awarding designations, the review panel shall consider the extent to which the applicant has instituted permit streamlining measures for permits under its authority, whether there is a single certified unified program agency within the boundaries of the area proposed in the application, whether provisions are included to ensure adequate public participation in the final permit decisions on facilities subject to a facility compliance plan, and the extent of existing or proposed agreements between the applicant and other local, state, and regional permitting agencies with jurisdiction within the boundaries of the area proposed in the application.

(d) A requirement that all cities, counties, and local environmental agencies with permit authority over the projects subject to a facility compliance plan within the proposed permit consolidation zone agree to the designation.

(e) In awarding designations, ensure a diverse range of permit consolidation zones, including, but not limited to, urban and rural counties, large and small cities, and communities encompassing military base or reservations reuse.

71035.4. (a) (1) A designated city or county may terminate its involvement in the pilot program established pursuant to this chapter following 180 days' written notice to the secretary. The permit consolidation zone shall be deemed terminated at the end of the 180-day notice period.

(2) Notwithstanding any other provision of law, any facility within the terminated permit consolidation zone permitted through a facility compliance plan pursuant to Section 71035.5 shall be deemed to hold valid environmental permits until individual environmental permits are issued or denied for the facility by the applicable environmental agencies.

(b) An application for amendment to a permit consolidation zone designation shall be submitted by the applicable city or county to the review panel under Section 71035.3. Any amendment shall become effective within 90 days after the date of receipt by the review panel.

(c) The procedure for replacing a facility compliance plan in whole or in part with individual environmental permits, as a result

of an amendment or termination of a permit consolidation zone designation, shall be specified in the applications submitted pursuant to Section 71035.3.

71035.5. The facility compliance plan substituted pursuant to subdivision (b) of Section 71035.1 shall provide for all of the following:

(a) Substitution of the plan for all individual state agency and local environmental permits that would otherwise be required for the proposed project, unless otherwise specified in the designation application submitted by the applicant city or county.

(b) Measures to be taken by the project applicant to ensure compliance with all applicable rules, regulations, ordinances, and statutes and to ensure that the facility compliance plan is as enforceable as individual permits.

(c) The equivalent opportunity for public notice, hearing, comment, participation, administrative appeal, and judicial review as provided in the environmental permit process that would otherwise be applicable.

(d) All applicable individual environmental permits for the project to be deemed to have been issued upon receipt of a complete and adequate facility compliance plan by the secretary.

(e) A filing fee to reflect the reasonable costs of all agencies that would otherwise issue individual permits for the project covered by the facility compliance plan, and that also reflects the reduced costs of the applicable agencies through reduced staff review of individual permits. Any fee shall be subject to Section 57001 of the Health and Safety Code. The project applicant shall not be liable for any application fees for any individual permit that is otherwise addressed in the facility compliance plan. Local agencies shall identify and quantify any local fees in the application submitted pursuant to Section 71035.3.

71035.6. (a) Environmental agencies with jurisdiction over portions of the compliance plan shall determine if a compliance plan is complete and adequate, in accordance with this section, as it relates to their particular area of jurisdiction.

(b) A determination of completeness and adequacy shall be based solely upon whether there is compliance with the rules, regulations, ordinances, and statutes governing the environmental agency. As part of the determination of adequacy, an environmental agency may require additional conditions necessary, in its judgment, to make the facility compliance plan consistent with its rules, regulations, ordinances, and statutes.

(c) If an environmental agency possessed discretionary authority over a facility prior to the enactment of this chapter, then the determination of completeness and adequacy shall be a discretionary action for purposes of the California Environmental Quality Act (Division 13 (commencing with Section 21000)). If, subsequent to the enactment of this chapter, an environmental agency, by

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regulation, eliminates its discretionary authority over a facility, then the determination of completeness and adequacy shall not be a discretionary action for purposes of the California Environmental Quality Act.

(d) An environmental agency shall transmit its determination to the secretary within 45 days from the date of receipt of the facility compliance plan.

(e) (1) If an environmental agency determines that a facility compliance plan is not complete and adequate, the agency shall, within the 45-day period specified in subdivision (d), transmit that determination, in writing, to the project applicant. The agency's determination shall specify those parts of the plan that are incomplete or inadequate and shall indicate the manner in which they can be made complete and adequate, including a list and thorough description of the specific information needed to make the plan complete and adequate. The project applicant shall submit materials to the environmental agency in response to the list and description.

(2) Not later than 30 calendar days after receipt of the submitted materials, the environmental agency shall determine in writing whether they are complete and adequate and shall immediately transmit that determination to the applicant. If the written determination is not made within the 30-day period, the application together with the submitted materials shall be deemed complete and adequate for purposes of this chapter.

(3) If the plan together with the submitted materials are determined not to be complete and adequate pursuant to paragraph (2), the environmental agency shall provide a process for the applicant to appeal that decision in writing to the governing body of the agency or, if there is no governing body, to the director of the agency, as provided by that agency. There shall be a final written determination by the agency on the appeal not later than 60 calendar days after receipt of the applicant's written appeal. Notwithstanding a decision pursuant to paragraph (2) that the application and submitted materials are not complete and adequate, if the final written determination on the appeal is not made within that 60-day period, the application with the submitted materials shall be deemed complete and adequate for the purposes of this chapter.

(4) Nothing in this section precludes an applicant and an environmental agency from mutually agreeing to an extension of any time limit provided by this section.

(f) All applicable individual environmental permits for the project shall be deemed to have been issued upon receipt of a complete and adequate facility compliance plan, as determined by the secretary, after receiving the determinations of completeness and adequacy from environmental agencies pursuant to subdivision (a). In determining completeness and adequacy, the secretary shall

not substitute his or her judgment for that of the applicable environmental agencies.

71035.7. The secretary shall provide regulatory assistance with regard to projects permitted through a facility compliance plan.

71035.8. Facility compliance plans may not be applied to projects involving any of the following:

- (a) The incineration of wastes.
- (b) The storage, treatment, transportation, or disposal of radioactive materials.
- (c) Other activities that the secretary determines, based on risks to the environment and the public health and safety, to be appropriately regulated through individual permits.

(d) Other activities within a specific permit consolidation zone as requested by the city or county in its application submitted pursuant to Section 71035.3.

71035.9. This chapter shall be implemented by the secretary only to the extent consistent with federal law and any delegation agreements with federal agencies.

71035.10. The secretary and the Secretary for Trade and Commerce shall prepare and submit an annual report to the Governor and the Legislature by January 31 of each year, containing the following:

(a) A description and location of facilities permitted through a facility compliance plan, including the number of individual environmental permits that otherwise would have been required, an estimate of cost savings to the participating facilities and the involved environmental agencies as a result of the pilot program, and the degree to which compliance with the applicable environmental laws and regulations has been maintained or increased through the pilot program.

(b) As appropriate, recommendations for modification, expansion, or elimination of the pilot program established by this chapter.

(c) Recommendations for how the pilot program could be expanded to complex facilities including, but not limited to, whether the 45-day review of facility plan completeness and adequacy should be expanded.

71035.11. This chapter shall remain in effect until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2002, deletes or extends that date.